

THE COMMONWEALTH.

KENTUCKY LEGISLATURE.

IN SENATE.

MONDAY, Feb. 27, 1860.

The Senate was opened with prayer by Rev. Jos. RAND, of the Methodist Church. The reading of the Journal of Saturday was dispensed with.

A PETITION.

Was presented by Mr. GLENN and appropriately referred.

REPORT OF A SELECT COMMITTEE.

Mr. GLENN—a bill for the benefit of the Christian church and Clarksville turnpike company: passed.

A MESSAGE FROM THE H. R.

Was received, announcing the passage of sundry bills which originated in that House.

REPORTS OF COMMITTEES.

Mr. DEHAVEN—Finance—asked to be discharged from the petition of the Odd Fellows Hall Association of Covington, asking a release from taxes on their Hall property.

Mr. FISK opposed the discharge at length. He explained the grounds of the application for the relief from taxes.

Mr. RHEA advocated the discharge; he explained at length the views of the committee. He thought the principle wrong; it was an indirect appropriation out of the Treasury. He thought this not as meritorious a case as the case of a widow lady of Todd county, against whose petition the committee were constrained by a sense of duty to report.

Mr. PENNERAKER differed from Mr. RHEA, and opposed the discharge. He spoke at length in favor of the release of taxes to Odd Fellows, and explained their position.

Mr. FISK again opposed the discharge briefly.

Mr. WHITAKER advocated the discharge of committee.

Mr. HAYCRAFT replied to Mr. WHITAKER and opposed the discharge.

The vote was then taken on the discharge of the committee, and it was decided in the affirmative by yeas, 13; nays, 8.

CONSTITUTIONAL QUESTION.

Mr. BRUNER asked a suspension of the rules to enable him to offer the following preamble and resolution:

Whereas, The Constitution provides that "a session of the General Assembly shall not continue beyond sixty days, except by a vote of two thirds of all the members elected to each House," and whereas, by a joint resolution of the General Assembly the present session was extended beyond sixty days by a vote of two thirds of all the members elected to each House, and the time to which the session was extended expired the 24th of the present month, (February,) Wherefore,

Resolved, as the opinion of the Senate, that the time the General Assembly could constitutionally set for legislative business expired on Friday, the 24th of February, 1860.

The Senate refused to suspend the rules by a vote of yeas, 12; nays, 13.

MOTION TO RECONSIDER.

Mr. ANDREWS moved to reconsider the vote rejecting "a bill in relation to the future mode of proceedings in obtaining tavern licenses;" motion entered.

REPORTS RESUMED.

Mr. DEHAVEN—Finance—a bill for the benefit of H. B. Lewis deceased: passed.

Same—a bill for the benefit of A. J. Mereson's securities of Rockcastle county: passed.

A bill to extend the time for contesting the election for the office of judge of Jefferson county: passed.

Mr. ANDREWS moved (at the request of Senator RUST who could not be here) to postpone the bill until to-morrow at 10 o'clock: negatived by yeas, 11; nays, 12.

Mr. SPEAKER (Porter) advocated the bill at length.

Mr. WHITAKER wished to examine authorities, and moved to postpone the bill until to-morrow at 9 o'clock.

The Speaker (Mr. GIBBELL) in the chair decided the motion out of order.

Mr. PENNERAKER opposed the bill at length, he thought the principle involved in this bill unprecedented and wrong, and he had no doubt was unconstitutional, being an *ex post facto* law.

Mr. WHITAKER moved to refer the bill to the committee on Revised Statutes to report to-morrow at 10 o'clock.

Mr. FISK opposed the motion to commit, and advocated the bill at length; he thought there was no doubt of the Constitutionality of this case.

Mr. DEHAVEN replied to Mr. PENNERAKER on the question of *ex post facto* laws.

Mr. ANDREWS opposed the bill briefly; he was opposed to the policy of interfering with the principle of acts of limitation involved in this case.

Mr. WHITAKER addressed the Senate in favor of the motion to reconsider. He wished to commit to the Senate had refused to postpone to 10 to-morrow; his motion to postpone to 9 o'clock was declared out of order. He opposed the bill if a vote was pressed now.

Mr. GIBSON moved the previous question: ordered.

The question was then taken on recommitting with instructions to report to-morrow at 10 o'clock, and it was decided in the negative—yeas, 11; nays, 16.

Mr. WALTON moved the previous question: ordered by yeas, 17; nays, 11.

Mr. PENNERAKER raised the question that it required four fifths to carry the previous question.

The Speaker (Mr. GIBBELL) in the chair decided that only a majority was required.

Mr. PENNERAKER appealed.

The vote was taken shall the decision of the chair stand as the decision of the Senate, and it was decided in the affirmative by yeas, 24; nays, 1.

3d SPECIAL ORDER.

A bill to provide a more efficient Police for the city of Louisville was taken up.

An amendment had been offered by the committee who reported it providing "that if the Chancellor shall fail to perform the duties imposed by the bill, the Governor shall exercise the power conferred on the Chancellor."

Mr. ANDREWS opposed the bill briefly.

Mr. ALEXANDER moved an amendment to the amendment providing that the provisions of the bill shall apply to the cities of Lexington and Covington.

Mr. ALEXANDER opposed the bill on the ground that the bill was not asked for by petition, so far as he had ever heard, and was largely protested against by citizens of Louisville.

Mr. FISK replied to Mr. ALEXANDER, and exhibited petitions which he said asked for this law; they never had been publicly exhibited before. He advocated the bill.

Mr. WHITAKER replied to Mr. FISK. He said those petitions had never been presented in any authentic form before the Senate or the committee before whom the bill was they knew nothing of them. He opposed the bill.

Action on the bill was cut off by the hour for the

ORDERS OF THE DAY.

A bill to charter the Henderson's Savings Institution was taken up.

Mr. GROVER offered an amendment, making the stockholders individually liable for all the debts of the Institution as partners are now liable by law; also fixing a tax of 50 cents on the \$100 of stock: adopted.

The bill was then rejected by a tie vote of 11 to 11.

A bill to charter the City Bank of Henderson—referred to the Finance committee.

A bill to charter the Henderson Savings Institution—referred to the Finance committee.

MOTION TO RECONSIDER.

Mr. GIBSON moved to reconsider the vote rejecting the "bill to charter the Henderson Savings Institution"—reconsidered.

H. R. BILLS PASSED AND REJECTED, &c.

A bill to authorize persons confined in jail for fines to replevy the same before circuit court clerks—passed.

A bill in relation to Caveats—passed.

A bill in relation to the duties of clerks of courts—referred to Judiciary committee.

A bill to regulate the circuit courts in the 3d judicial district—passed.

A bill to allow Ohio county court to levy an additional ad valorem tax—passed.

A bill for the benefit of Dickey & Thomas, of Edmonson county—referred to the committee on Propositions and Grievances.

A bill to amend the charter of the Lancaster and Crab Orchard turnpike—passed.

A bill to amend the charter of the Paint Lick and Wallace Mill turnpike road company—passed.

A bill to prescribe the times of the spring and summer terms of the Franklin circuit court—placed in the orders of the day.

A bill to charter Vienna Division, No. 286, S. of T., in Clarke county—passed.

A bill to amend the charter of the Lexington and Frankfort turnpike extension company—passed.

A bill in relation to the town of Greensburg—passed.

A bill authorizing the Taylor county court to fix the times of justice's courts in said county—passed.

A bill to amend the charter of the town of Monticello in Wayne county.

Before action the Senate took a recess until 3 o'clock.

EVENING SESSION.

The H. R. bill to amend the charter of the town of Monticello, (being the business before the Senate when the recess was taken,) was again taken up.

Mr. ANDREWS resumed his remarks on the bill, and moved to refer the bill to the committee on County Courts—carried.

A bill to charter the Kidville turnpike road company—passed.

A bill to repeal the act to prevent the destruction of fish in Little River—passed.

A bill to amend the charter of the Millersburg and Cane Ridge turnpike company—passed.

A bill for the benefit of the town of Burlington, in Boone county—passed.

A bill in relation to the road from Union to Rabbit Hash, in Boone county—passed.

A bill to charter the Big Spring and West Point turnpike company—passed.

A bill to change the line of district No. 1, in Harrison county—passed.

A bill to charter J. F. Keel Lodge of F. and A. Masons—passed.

A bill for the benefit of Fayette county—passed.

A bill to authorize judges of county courts of the counties of Henderson, Hopkins and Union to change precincts—passed.

A bill to amend the act for the benefit of John M. Johnson and S. L. Singletary—passed.

A bill to authorize the Hickman county court to establish another district in said county—passed.

A bill to charter the Deposit Bank of Madisonville—referred to the Finance committee.

A bill for the benefit of John Walden, of Estill county, [\$135 for sheriff and one guard to take a lunatic to the Asylum by order of court]—passed by yeas, 24; nays, 1.

A bill to authorize the appointment of a deputy clerk at Columbus, and to define his duties—passed.

A bill to legalize the election of mayor and council of Hickman, and change the time of election—passed.

A bill for the benefit of Alfred Sturgeon, of Hardin county—passed.

A bill for the benefit of L. F. Andrews, of Graves county—passed.

A bill for the benefit of the Clarksville Branch of the Bank of Tennessee—referred to the committee on the Sinking Fund.

A bill to charter the Brandenburg Savings Bank—referred to the committee on Finance.

REPORTS OF COMMITTEES.

Mr. DEHAVEN—Finance—reported some days since a bill to place head and foot stones at the graves of Colonels McKee and Clay, Capt. W. T. Willis, and Adjutant E. M. Vaughan. It was taken up and adopted unanimously.

Mr. DEHAVEN—a bill for the benefit of David Fitzgerald, of Henry county, [appropriates \$200 for books, &c., of guards at jail].

Mr. PENNERAKER moved to amend by inserting \$350, the amount allowed by the Circuit Court Judge as being just—adopted.

The bill was then rejected by yeas, 17; nays, 7; requiring 20 to pass it.

Mr. WAIT moved a reconsideration of the vote rejecting the bill—carried.

Messrs. DeHaven, Andrews, Penneraker, and Harvill, earnestly advocated the bill as an act of simple justice.

Mr. MCKEE moved the previous question—ordered.

The bill was then passed by yeas, 23; nays, 5.

Mr. ALEXANDER—Finance—a bill to remove the remains of Ellison Williams to the Frankfort Cemetery, [\$90 appropriated], with the opinion it should not pass: the resolution was adopted by yeas, 15; nays, 9.

A MESSAGE FROM THE GOVERNOR.

Was received, announcing the approval of sundry Senate bills by the Governor.

Mr. GILLISS reported a number of bills correctly enrolled, and they were signed by the Speaker.

REPORTS RESUMED.

Mr. ALEXANDER—Finance—a bill for the benefit of William Cromwell, sheriff of Hickman county: passed.

Same—a bill for the benefit of James G. Edens, of Gray county: passed.

Same—a bill for the benefit of W. A. L. B. Sharp, sheriff of Estill county: passed.

Mr. FISK—Education—a bill to amend the Common School Laws of this Commonwealth.

Mr. GROVER offered an amendment: the bill and amendment were ordered to be printed, and made the special order for to-morrow at 10 o'clock.

Mr. FISK—Education—a bill for the benefit of the Common School System of this Commonwealth. [Submits to a vote of the people an additional tax of three cents for school purposes.]

Mr. IRVIN offered an amendment.

Mr. WHITAKER also offered an amendment.

The bill and amendments were placed in the orders of the day.

REPORT OF A SELECT COMMITTEE.

Mr. PENNERAKER—a bill to amend the charter of the Franklin Savings Institution. [Changes the shares \$100]—passed.

A REPORT OF JUDICIARY COMMITTEE.

Mr. CISELL—a bill to amend the law in relation to inheritance among aliens.

Before action on it, the Senate adjourned.

IN HOUSE OF REPRESENTATIVES.

MONDAY, FEBRUARY 27, 1860.

Prayer by the Rev. JOSEPH RAND, of the Methodist Church.

The reading of the Journal of Saturday was dispensed with.

SENATE BILL.

An act to repeal so much of the 5th section of

the act creating the 14th judicial district as relates to McLean county: passed.

BILLS REPORTED.

Mr. GEIGER—a bill to amend the charter of the Kentucky Savings Bank at Louisville. [Changes name to Merchants Bank of Kentucky:] passed.

Same—a bill to amend the charter of the German Insurance company of Louisville: passed.

Same—a bill concerning Jefferson county and the levy court: passed.

Mr. CARLISLE—a bill to incorporate the Kentucky Independent Kentucky Rovers: passed.

Same—a bill to incorporate the Kentucky Silver Mining company: passed.

Same—a bill for the benefit of S. M. Moore, of the 9th judicial district. [Allowed \$10 per day and expenses for holding courts in other districts than his own, at the request of the Governor.]

Mr. GAITHER offered an amendment, making the provisions of the bill apply to all the circuit judges in the State: adopted.

The bill as amended was then rejected—yeas, 30; nays, 43.

Mr. CARLISLE—a bill to provide compensation to county judges for holding inquests in certain cases: referred to the committee on the Judiciary.

Mr. WORD—a bill for the benefit of Wm. Sear: passed.

Mr. M. J. COOK—a bill providing for the county of Jackson to vote for Senator and Representative: referred to the committee on Privileges and Elections.

Mr. LACEY—a bill authorizing the trustees of Crab Orchard to sell a church and lot in said town: passed.

Mr. W. L. NEALE—a bill to relieve the State from the predatory visits of wandering gipsies: passed.

Mr. BURTON—a bill for the benefit of the Lebanon and Hustonville turnpike road company: passed.

Mr. LUTTRELL—a bill for the benefit of Sanford M. Collins, of Mason county: referred to the committee on Claims.

Mr. FORMAN—a bill regulating fees for arresting runaway slaves: amended and passed.

Mr. RICHARDSON—a bill to amend the charter of the town of Brandenburg: passed.

Mr. ABELL—a bill regulating the holding the equity, criminal, and penal courts in the 5th judicial district: referred to the committee on Circuit Courts.

Same—a bill to change the place of voting in the 3d district in Mercer county: passed.

HOUSE BILL AMENDED IN THE SENATE.

An act to incorporate the Lexington and Danville railroad company: amendments concurred in.

RESOLUTIONS.

Mr. GEIGER offered the following resolution, which was adopted, viz:

Resolved, That the committee on Privileges and Elections be and they are, to report Senate bill 273, at 3 o'clock this evening.

Mr. GEIGER offered the following resolution, which was adopted, viz:

Resolved, That this House meet at 9 A. M.; take a recess at 1 P. M.; meet at half-past 2 P. M.; take a recess at 5 P. M., and meet at 7 P. M.

Mr. CARLISLE offered the following resolution, which was adopted, viz:

Resolved, That the committee on Banks be instructed to report on Wednesday next, at half-past 10 o'clock, A. M., a bill to provide for the appointments by the Governor, of a supervisor or supervisors of banks, with a suitable salary or per diem allowance, whose duty it shall be to report, quarterly, to the Governor, the amount of the circulation of the banks in the State, the amount of deposits, stock, notes discounted, bills purchased, specie on hand, what amount of money has been used in discounting notes or purchasing bills of exchange for persons residing in and doing business out of the State, together with their assets and liabilities of every kind, and the names and residences of the stockholders, with the amount of subscribed and un-subscribed stock in each bank.

Mr. GEIGER moved to refer the resolution to the committee on Federal Relations—rejected.

Mr. CLEARY moved to amend the resolution by striking out the words "be instructed," and insert "be requested to inquire into the expediency;" adopted.

Mr. F. NEEL moved to lay the resolution on the table: rejected—yeas, 33; nays, 44.

The resolution was then adopted.

Mr. EWING offered the following resolution, viz:

Whereas, The constitution provides that "a session of the General Assembly shall not continue beyond sixty days, except by a vote of two thirds of all the members elected to each House," and whereas, by a joint resolution of the General Assembly, the present session was extended beyond sixty days by a vote of two thirds of all the members elected to each House, and the time to which the session was extended expired on the 24th of the present month, (February,) Wherefore,

Resolved, As the opinion of the members of the House of Representatives, that the time the General Assembly could constitutionally set for legislative business, expired on Friday, the 24th of February, 1860.

The question being taken, the resolution was rejected—yeas, 27; nays, 50.

Mr. ABELL offered the following joint resolution, viz:

Resolved by the General Assembly of the Commonwealth of Kentucky, That a joint committee of three members of the House, and two of the Senate, be appointed to inquire into the expediency of building a new Capitol for the Governor's house, and that such committee be instructed to report during the session of this Legislature a plan, and the probable cost of such improvement.

The resolution was rejected.

HOUSE BILL AMENDED IN THE SENATE.

An act to amend the charter of the town of Somerset: amendment concurred in.

BILLS REPORTED.

Mr. BUCKNER—a bill for the benefit of Fayette county—passed.

Mr. GAYLE—a bill concerning banks. [After the passage of this act, no bank shall issue notes of a less denomination than \$5:] referred to the committee on the Judiciary, with instructions to report the same on Wednesday, at half-past 9 o'clock.

Mr. FISK—a bill to amend the act creating the office of police judge and town marshal in the town of Frankfort—amended so as to make its provisions apply to the town of Foster, in Bracken county, and passed.

Mr. TERRY—a bill to repeal a part of section 32, article 2, chapter 37, of the Revised Statutes. [Repeals that part which prevents commissioners from being appointed administrators:] passed.

Mr. McELROY—a Senate bill for the benefit of George Parker, late sheriff of Union county—passed.

Same—a Senate bill to authorize E. Y. Coghill to establish a coffee-house in Morganfield—passed.

Mr. TVE—a bill for the benefit of the Williamsburg, Cumberland River, and Tennessee railroad company: [appropriates \$10,000 per mile to said road: to be paid out of the State Treasury.]

The question being taken on the passage of the bill, it was decided in the negative—yeas, 4; nays, 62.

Same—a bill in relation to the fees of sheriffs: rejected.

DEPOSIT BANK OF MADISONVILLE.

The House then took up the motion to reconsider the vote rejecting the bill to incorporate the Deposit Bank of Madisonville: adopted.

The bill was then amended, and passed.

KENTUCKY MILITIA.

The House then took up the bill for the better organization of the Kentucky Militia: postponed until to-morrow at 12 o'clock.

DIVIDING LINE BETWEEN TENNESSEE AND KENTUCKY.

The House then took up the bill relative to the boundary line between the States of Kentucky and Tennessee: referred to the committee on Claims, with instructions to report at 11 o'clock to-morrow.

AUDITOR'S OFFICE.

The House then took up the bill to provide for the completion of the unfinished business, and additional clerks in the Auditor's office. [Directs the Auditor to employ Thos. S. Page to bring up the business of the office to the 1st of January, 1860, and appropriates \$800 to pay for the same; and appropriates \$1,500 annually for the employment of additional clerks.]

Mr. LUTTRELL moved to amend the bill by striking out that part of the bill which authorizes the employment of Mr. Page to bring up the business of the office to 1st January, 1860.

And then the House took a recess until half past 2 o'clock.

EVENING SESSION.

The House resumed the consideration of the bill in relation to bringing up the business of the Auditor's office, and in relation to the clerks in the office.

Mr. WM. JOHNSON made a call of the House: adopted.

The roll was called, and the Sergeant at Arms sent after the absentees.

Mr. LEACH moved to suspend the call of the House temporarily, in order that the House may proceed with other business: adopted.

FRANKLIN SAVINGS INSTITUTION.

Mr. WOLFE moved to take up the motion to reconsider the vote rejecting the bill to amend the charter of the Franklin Savings Institution: adopted. [Name changed to the Franklin Bank of Kentucky; price of stock increased from \$25 to \$100; may increase capital stock \$300,000 whenever a majority of the stock holders shall so determine:] rejected—yeas, 31; nays, 32.

CALL OF THE HOUSE.

Mr. LEACH moved to reconsider the vote suspending the call of the House temporarily: adopted—yeas, 43; nays, 21.

Mr. GAITHER moved to lay the motion to suspend the rule under the call of the House on the table: adopted—yeas, 37; nays, 29.

Mr. McELROY moved to suspend the further proceedings under the call of the House: adopted.

The House then resumed the consideration of the bill in relation to the Auditor's office.

Mr. ALEXANDER moved to reconsider the vote ordering the bill to a third reading: rejected.

Mr. D. P. WHITE offered an amendment, directing the Auditor to report to the Governor the amount paid by him under this act for additional clerk hire, and the rate per annum or per month paid to each additional clerk: adopted.

The question was then taken on the passage of the bill, and it was decided in the negative—yeas, 35; nays, 46.

Mr. ABELL, from the committee on Claims, reported a bill for the benefit of William Gracy, with the opinion of the committee that it ought not to pass. [Appropriates \$— to buy a pair of artificial arms for said Gracy, who has lost both arms.]

Mr. RATCLIFF moved to amend the bill by filling the blank with \$300: adopted.

Mr. WORD offered an amendment, appropriating \$50 to buy an artificial leg for Wiley Morris, of Knox county.

THE COMMONWEALTH. FRANKFORT.

THOMAS M. GREEN, Editor.
TUESDAY, FEBRUARY 28, 1860.

A Nice Operation by a Democratic Officeholder.

During the year 1858 the Auditor issued a warrant to Judge Nuttall for his salary as Circuit Judge, which was presented to Mr. Garrard, as Treasurer, for payment. He refused to pay it upon the ground that a deduction should have been made by the Auditor for a certain sum that had been paid to a *pro tem* Judge. The Treasurer called upon the Attorney General for advice as to his (Treasurer's) duty in the premises. The Attorney General gave it as his opinion that the Treasurer ought to pay it; that he had no power to revise the act of the Auditor; and that, in point of law, Judge Nuttall was legally entitled to the money. The Treasurer assumed the right of forming his own opinion as to his official duty, and refused to conform his official action to the advice given to him by the Attorney General, and still refused to pay the warrant. And thereupon Judge Nuttall proceeded against Mr. Garrard by mandamus. The Circuit Court awarded a peremptory mandamus, and Garrard appealed. The Court of Appeals affirmed the judgment of the Circuit Court, with costs. Mr. Garrard applied to the present Legislature to be reimbursed for the costs he had expended in resisting the opinions of the Attorney General and the courts, amounting to sixty or eighty dollars, and an act has passed giving him the money.

The office of Attorney General is created mainly to give the Executive officers legal opinions as to the discharge of their duties, and the law makes it the duty of the officer to be governed by the opinion so given; but Mr. Garrard, assuming to be more conversant with the law than the Attorney General, disregarded his opinion, resisted the payment of a just claim, and then calls upon the Legislature to foot the bill, which has been done.

It is a dangerous precedent, revolutionary in its principles, and will be followed by other officers, to the great loss of the public treasure. And what is the reward Mr. Garrard asks of the Legislature for resisting the law? It is to raise his salary from \$1,700 to \$2,000, and to give him a clerk with a salary of \$500.

The infamous bill which was concocted by the Locofoco leaders of this county, by which it is restricted, and under which many of our citizens who live in sight of and near to our city, will be compelled to go from 7 to 10 miles into the country to vote, passed the House of Representatives yesterday, and of course will become a law. No one need now doubt that Locofoco leaders can go down to the lowest depths of meanness to accomplish the base ends of party. The outrage inflicted by that bill upon many of our citizens is unparalleled in the history of Kentucky legislation. We shall have more to say of it hereafter.

The thanks of every Opposition citizen of Franklin county are due to our able Representative for the bold and vigorous opposition made by him to that infamous bill. He demonstrated its unfairness to every candid man. But it did no good. It was a foregone conclusion. Party interests must be and were subserved.

Decision of the Court of Appeals.

Reported expressly for the Commonwealth by JOHN M. BROWN, Attorney-at-Law, Frankfort, Ky.

WHITEHEAD ET AL. vs. ROOT & CO. ET AL. From the Carroll Circuit.

The appellants being, as appears from the record, distillers, and engaged at the time in the manufacture of whisky at their distillery, contracted with appellants to deliver at any time within twelve months from date "ten thousand dollars worth of whisky at twenty-one cents per gallon." In an action against appellants for not complying with the contract, they answer, stating that the whisky, the subject of the contract, not being in issue at the date thereof, the contract was void. Appellants demurred to this as well as the second and fifth paragraphs of the answer, and the demurrer to each paragraph being overruled by the court below, they elected to stand by the demurrer to the first paragraph, and have brought the case here.

Judge DUVALL delivered the opinion.

If the case of *Bryan vs. Lewis*, the doctrine in which was directly overruled in the late case of *Hebbelich vs. McMorris, 5 M. & W. 462*, were conceded to be authority at the present day, the case under consideration is not within either its facts or its principles.

All the authorities concur in laying down, and this court, in the case of *Wheeler vs. Wheeler*, decided at the present term, recognizes the rule that there can no valid sale unless the thing sold has either an actual or potential existence at the time of the sale. (*Kent's Com. & Blackstone's Com.; Chitty on Contracts, p. 418.*)

But neither the rule itself, nor the reason on which it is founded, has any application to the case under consideration. The contract here must be regarded as a special or executory agreement for the sale and delivery of \$10,000 worth of whisky. That such was the intention of the parties is manifest upon the face of the instrument. The vendors were engaged at the time the contract was entered into in the manufacture of whisky. The subject of the contract was whisky to be delivered at any time within twelve months from date. No specific lot of whisky is referred to, nor do the terms of the writing authorize the inference that the whisky was then on hand, or had been set apart, or had been even then manufactured by the vendors, or that it was so understood at the time the contract was executed. On the contrary the most reasonable and natural construction of the agreement, giving proper effect to all its parts, is that the whisky was to be thereafter manufactured, and to be delivered at the time and in the manner stipulated.

In the failure to distinguish between these two distinct classes of contracts, expressly recognized in *Parsons on Contracts, 1 vol. p. 439*, and *Wheeler vs. Wheeler* and other authorities, *supra*, lies the fallacy of the whole argument by which it is attempted to prove that the contract before us is invalid and non-enforceable.

It follows that the facts set forth in the first paragraph of the answer, presented no valid defense to the action, and the court erred in overruling the demurrer thereto.

We are of opinion that the demurrer to the second and third paragraphs was properly overruled. The allegation that the writing sued on was obtained from the defendants by fraud, covin, and misrepresentation of the plaintiffs is the averment of a substantive and traversable fact. This was repeatedly held to be a good plea before the adoption of the code, and there is nothing in the section referred to, (see 175,) which can be construed as operating to change the law in this particular.

The fifth paragraph, although it contains a large amount of useless matter, yet sets forth a state of fact which, if true, must be deemed sufficient to defeat the action. As the first paragraph is held to present no sufficient defense to the action, the plaintiffs will of course be entitled to a trial of the issues made by the second and fifth paragraphs. They were not bound, or even allowed, by the code to reply, but the facts stated in those paragraphs stood controverted by law.

For the error mentioned the judgment is reversed, and the cause remanded, with directions to sustain the demurrer to the first paragraph of the answer, and for further proceedings not inconsistent with this opinion.

Judgment is affirmed upon the cross appeal of Root & Co.

Speeches of Messrs. Sherrill, Cleary and Goodloe, in the House of Representatives, on the announcement of the Death of Hon. John G. Lyons.

MR. SHERRILL said—With sadness and sorrow I arise in my place to add my share of tribute to the memory of John G. Lyons, so recently an honorable and honored Senator from the city of Louisville. Where is he now? Sir, he is gone to that bright world beyond the confines of time; "gathered to his Fathers" in that mansion beyond the skies, where all good men hope at last to arrive.

MR. SPEAKER, who was John G. Lyons. He was an honorable, high-toned, sensible and dignified gentleman; a Christian and a patriot. Aye, sir, he was "a good man," and when I say he was "a good man" I want to be understood as meaning that he was entitled to the epithet of "good man" in its broadest and most significant sense. Mr. Speaker, I think that I knew Mr. Lyons well; having served with him on the board of school trustees of the city of Louisville, and having been associated with him for over one year, I have had an opportunity of discovering his excellence. He was a man, sir, of the noblest impulses—every thing that could make the Christian, the patriot, and the philanthropist. Mr. Speaker, he is gone to another country beyond the shores of time; to that glorious country where the great I Am receives the anthems and praises of the countless thousands that make up the heavenly family.

In conclusion, allow me to say I hope that we will all be able to profit by this dispensation of the great Jehovah, and that when we are called to our last account, we may leave behind us as much evidence of our worth as citizens as did Mr. Lyons. Mr. Speaker, I can say no more than to invoke the blessings of heaven upon his bereft and stricken family and friends.

MR. CLEARY said—After the very beautiful and feeling remarks of the members from Louisville, it was perhaps better that I should remain silent. The flowers of friendship and feeling have been tenderly laid upon the grave of my deceased friend, but I cannot resist adding my humble tribute to his memory and virtues. It was not my good fortune to know Mr. Lyons until the present session of the General Assembly, from an acquaintance then formed, and continued until he left for his home sick and broken down by devotion to the duties of his office and his interest in the country. He was associating with him day after day, with frequent opportunity of observation, I can say that the first impression has ripened into the conviction that John G. Lyons was that noblest work of God—"an honest man." Sir, the Senate has lost one of its best members; the people of Louisville a vigilant, attentive and active representative; and the people whom he here so well represented, and society a man just, good and true. His many fine qualities were cherished and enshrined in our dearest recollection. Peace be to his ashes.

MR. GOODLOE said—Mr. Speaker, I rise to add a word to the memory of him who claims our attention on this melancholy occasion. I do not speak of him as a matter of cold form, or because it is simply appropriate that he should be spoken of on this floor, where he occupied a seat so long, so well and so honorably. I speak because my heart dictates, and demands that his emotions shall have voice.

I probably knew the deceased better than any member here, excepting those who represent the city of Louisville. It was my good fortune to have served two terms with him on this floor, and to be admitted to his intimate friendship. We have labored and co-operated together, and I often found in his clear, sound, practical judgment the most valuable assistance, and I can honestly say that I have never known a man more calm and temperate in his opinions, more generous and liberal in his sentiments, or more conscientious and firm in his determinations. His sense of justice was most conspicuous, and over and around the discharge of every duty the beacon light of truth threw its pure and serene rays. As a legislator he was reliable and efficient. He was ever at his post guarding and advancing the interests of his constituents. He was decided in his political opinions, and firm in the advocacy of them. No man could be more so. But while he displayed great firmness, courage, and independence in his political action, and never failed to assert and prove his political principles, he retained the profound respect and affection of those who radically differed with him. In a social point of view Mr. Lyons was one of the most pleasant men I ever knew. He had a beaming, kindly face, an earnest manner and honest gentleness that won the hearts of all who knew him. His heart was sound to the core, and as true to his friendships and to his persuasions of duty as the needle to the pole. But above all these things, he was a Christian; a man who feared God, loved justice, and walked uprightly.

I can scarcely realize that he is dead. But a few days ago I saw him in this hall, shook hands and talked with him. But it is too true that that mortal of John G. Lyons now rests in earth. His pure spirit, freed from its prison bars, has winged its flight to sunbright climes, for which it longed with infinite desire. His death has carried sorrow not alone to the hearts of his family; there are many friends here whose hearts are wrung with grief, and whose tears are freely pouring over his new made grave.

MR. SPEAKER, may we live like him, and may the memories we leave behind us when we depart be such as cluster around his honored name.

The closing years of life are often rendered wretched by ailments which are trifling in themselves and easily cured if taken in time. Affection of the liver, stomach, and other organs concerned in digestion, are the most frequent. They naturally make the sufferer nervous, irritable and complaining, and relatives and friends are forced to bear the brunt of their ill-humor. The use of Hostetter's Celebrated Stomach Bitters will prove an efficient remedy for this evil. It will not only strengthen the most obstinate cases of Indigestion, Diarrhoea, Dysentery, and Liver Complaint. The first physicians in the country are loud in their praise of this preparation. Another recommendation of the Bitters is that it is so palatable to the taste that it may be used even as a beverage.

It is sold by all druggists in Frankfort.

We cannot too often impress upon mothers the great advantages to be derived from the use of Dr. John Bull's Vegetable Worm Destroyer. Put up as they are in the form of candy, children eat them with avidity, and the destruction of the worms is certain, and that, too, without injury to the health of the child.

The splendid specimens of Photographic art, on exhibition at Harris' Gallery, over the Post office, attract large numbers of visitors. The style and finish of these pictures is superior to any ever seen in Frankfort.

We are authorized to announce HARRY I. TODD as a candidate for Sheriff of Franklin county at the August election, 1860.

At Baltimore city, on the 20th instant, by the Rev. Dr. Elway, Chas. B. Getz to Miss Rose Seiglerwald.

DIED.

At his residence, in Frankfort, Kentucky, on the 21st day of February, 1860, EDWARD S. COLEMAN, aged 73 years, 8 months, 27 days.

The deceased was a native of Virginia; was born in Orange county in that State, on the 24th day of May, 1786, and emigrated to Kentucky with his father and family about the year 1795. In the year 1806 he settled in South Frankfort, and continued to reside there until his death.

The subject of this notice was, at the time of his death, one of the oldest citizens of Frankfort—there being no but few left who were here when he reared his log cabin in the dense forest which covered the ground upon which the city now stands. From then till now he pursued the tenor of life's uneven way, battling with its adversities, but ever maintaining a moral reputation unsullied and unimpeachable. As a man and a citizen he was extensively known and highly respected—a kind neighbor, an affectionate husband, a devoted father, beloved and esteemed by all, and most by those who knew him best. On the 26th of January last his aged and much respected wife departed this life, and in less than one short month God also called him home. His life, like that of others, was interspersed with its sunshine and shadow, its joys and its sorrows. At last the journey is ended, and he is taken from labor to rest, and to enjoy, as we trust, a sweet repose.

Where the golden streets are shining,
By the streams of living waters,
By the burning throne of glory,
There is rest at home.

On the 9th inst., at the residence of T. A. Berryman, in Owensboro, Ky., after a long and painful illness, MR. GEORGE M. MERRILL, in the 36th year of his age.

New York and Philadelphia papers will please copy.

LOUISVILLE THEATER.

FIRST NIGHT OF THE

NEAT LEDGER ROMANCE.

WRITTEN BY

MRS. E. D. E. N. SOUTHWORTH.

ENTITLED THE

DOOM OF DEVILLE.

Dramatized by Robert Jones, Esq.

THE above Thrilling Dramatic Romance will be presented on Monday Evening, February 27, 1860, and every evening during the week. The Popular Actors.

MISS SALLIE ST. CLAIR.

Appearing as LYONNE DE LA FORRE.

Supported by the

ENTIRE COMPANY.

Seats can be secured for any evening during the week. Tickets 75 cents each.

LORTON & TRUMPHORP.

Feb. 27, 1860—1w.

LOUISVILLE, KY.

FOR SALE.

A TRACT of land of about two hundred acres, on the Kentucky river, 3 miles and 1/2 miles from the Owen turnpike. Finely timbered, well watered, and the soil excellent. Twenty-five acres cleared. The improvements indifferently. For particulars apply to PHILIP SWIGERT, Esq., or ALBERT BACON.

February 27, 1860—1w.

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SPECIAL NOTICES.

"THE UNION."

The Address of Rev. JAMES CRAIK, D. D., delivered in the Hall of the House of Representatives, December 19, 1859, is for sale at the Bookstore of SAM. C. BULL, by the single copy or by the hundred copies, February 23, 1860—1w.

MEXICAN MUSTANG LINIMENT.

Its wonderful effects and consequent popularity—perhaps no article in the history of the Materia Medica ever acquired the same patronage, was subjected to the same number of severe and different tests, and met with so few failures as the Mustang Liniment. It has justly been styled a Panacea for all external Wounds, Cuts, Swellings, Sprains, Bruises, or Eruptions on Man or Beast. It is so far a medicine of surprising virtue, that Physicians are compelled to prescribe it, and from some remarkable cures of Chronic and Distorted Rheumatic cases it has naturally attracted much attention from the scientific minds of the age. No family can afford to be without a bottle of the Mustang Liniment. In the house, Beware of imitations. The genuine is sold by respectable Dealers in all parts of the world.

BARNES & PARK, Proprietors, New York.

Feb. 14, 1860.

DISSOLUTION.

The firm of PAGE, GAINES & PAGE was, on the 23d of January, 1860, dissolved by mutual consent—T. S. & J. R. Page retaining the Dry Goods and Queensware Establishment, with the notes and accounts of said firm—their business will be settled up by said T. S. & J. R. Page—W. A. Gaines retaining the Hardware and Groceries. Both Establishments will be carried on at the same Stand, where we will be pleased to serve our old patrons, and as many new ones as can make it to their interest to patronize us.

T. S. & J. R. PAGE, W. A. GAINES, J. Yeoman copy.

February 4, 1860.

Bridgeport Female Institute.

This new and prosperous institution, now in successful operation, will open its next Session on the First Monday of FEBRUARY, 1860. The Teachers, flattered by signal success in teaching heretofore, are determined not to be excelled by any rival Institution of a kindred character in this vicinity. Give us the pupils, and we will clearly demonstrate that in each instance we give value received.

J. HERVEY GARDNER, A. M. (From Va.) Principal and Proprietor.

MISS LUCY H. BALDWIN, from Ohio, and for the last three years Teacher in Mrs. Tevis' School, Shelbyville, Preceptress. (Bridgeport, Ky., Jan. 31, 1860.)

A CARD TO THE SUFFERING.

The Rev. WILLIAM COSGROVE, while laboring as a missionary in Japan, was cured of Consumption, when all other means had failed, by a recipe obtained from a learned physician residing in the great city of Jeddo. This recipe has cured great numbers who were suffering from Consumption, Bronchitis, Sore Throat, Coughs, and Colds, and the debility and nervous depression caused by these disorders.

Desirous of benefiting others, I will send this recipe, which I have brought home with me, to all who need it, free of charge.

Address, REV. WM. COSGROVE, 230 Baltic Street, Brooklyn, N. Y.

Jan. 16, 1860—3m.

I. O. O. F.

Phoenix Lodge, No. 28, I. O. O. F.

Meets at their Hall, on St. Clair Street, over Page, Gaines & Page's Grocery Store, in the Third Story, every Tuesday Evening, at 7 o'clock. Transient members in good standing are fraternally invited to attend. Entrance to the Hall, one door below Page, Gaines & Page's Grocery Store. By order of the Lodge.

Dec. 2, 1859—ds.

JOHN W. PRUETT, Sec'y.

MASONIC NOTICE.

Hiram Lodge, No. 4, meets on the Second and Fourth Monday Evenings in each month, at 7 o'clock, P. M., in their Lodge room in the Third Story over Page, Gaines & Page's Grocery Store, adjoining the Commonwealth Office, on Saint Clair Street.

Members of the Legislature who are Masons, and other visiting Brethren, are cordially invited to attend the meetings. By order of the Lodge.

Dec. 3, 1859—1w.

G. W. LEWIS, Secretary.

LUMBER YARD.

We have again established a Lumber Yard in Frankfort, on the lot at the intersection of Washington and Merit Streets, where will be kept, at all times, a full assortment of Poplar, Oak, Ash and Walnut Lumber, which will be sold upon reasonable terms for Cash.

Dec. 2, 1859.

J. S. & L. E. HARVEY.

MILLINERY AND FANCY GOODS!!

MRS. F. T. LYONS & CO., Saint Clair Street, Frankfort, Ky.

Have just received and opened a full and large assortment of Fashionable Fall and Winter Millinery Goods. The new stock embraces Cloaks, Points, Bonnets, Ribbons, Head-dresses, Caps, &c., &c., all of the latest styles and fashions.

Don't send to Louisville or Lexington when you can get what you want equally as elegant and far cheaper at home. Call and see.

Mrs. F. T. LYONS & CO.

Also Agents for WHEELER & WILSON'S Unrivaled Sewing Machines. (Oct. 14, 1859.)

REMOVAL.

R. RUNYAN

Has removed his store two doors above his old stand. He is selling his Goods, we are informed, at the lowest possible rate for cash down. Give him a call. We repeat what we said before, Runyan is all right.

Frankfort, Nov. 14, 1859.

Metcalf's "Kentucky Reports."

VOLUME 1. PRICE \$5.

We will send the 1st Volume of Metcalf's Reports by mail, postage paid, to any one who may wish it, on receipt of \$5.

A. G. HODGES & CO., Aug. 24, 1859. Cinth Office, Frankfort, Ky.

H. WHITTINGHAM,

NEWSPAPER & PERIODICAL AGENT, FRANKFORT, KENTUCKY.

Continues to furnish American and Foreign Weeklies, Monthlys, and Quarterlys, on the best terms. Advance Sheets received from twenty-four Publishers. Back numbers sent upon application to complete sets.

November 24, 1859.

New Style of Hats.

Philadelphia Fall style of Gentlemen's SILK HATS, just opened. Get the best.

S. C. BULL'S Book and Shoe Store.

September 2, 1859.

THE 1ST VOLUME

OF THE

KENTUCKY FARMER,

Sowed and bound with Muslin Backs and Stiff Paper Covers, can be had at this office at \$1 per copy.

Sep. 2, 1859.

A. G. HODGES & CO.

JOHN W. PRUETT is authorized to collect all claims due in the County of Franklin and City of Frankfort. I have also placed in Mr. Pruett's hands many notes due me by persons living in and out of the State of Kentucky.

A. G. HODGES.

21 East Fourth street, Cincinnati, Ohio.

Jan. 27, 1860—d.w.

A. STRAUS,

Manufacturer and Wholesale Dealer

IN ALL KINDS OF

FURNITURE & CHAIRS,

NO. 71 WEST FIFTH STREET, (BETWEEN WALNUT AND VINE STREETS.) CINCINNATI, OHIO.

Keeps constantly on hand a large stock of well made Furniture of all kinds at the lowest prices. All orders received through the Post Office will be promptly attended to. (Feb. 15, 1860—1w.)

EUGENE P. MOORE, ATTORNEY AT LAW, OFFICE: St. Clair Street, opposite Court House, FRANKFORT, KENTUCKY. January 12, 1859—1w.

GRAY & TODD,

DEALERS IN

FINE GROCERIES,

PURE OLD WHISKY,

BRANDIES, WINE, &c., &c.,

Cigars, Tobacco, Preserves,

FRUITS, PICKLES, TOYS, CONFECTIONERIES,

&c., &c.,

MAIN STREET, FRANKFORT, KY.

Jan. 18, 1860.

"Wines, Cordials, &c."

10 BASKETS Champagne Wine;

30 Boxes Claret Wine;

10 dozen Bottles Madeira Wine;

5 dozen Bottles Pale and Brown Sherry Wine;

4 dozen Bottles Old Port Wine;

